

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION**

JAMES E. NULL AND MILDRED NULL  
PLAINTIFFS

v.

AMERIQUEST MORTGAGE COMPANY  
1100 Town & Country Road  
11<sup>th</sup> Floor Legal Department  
Orange, California 92868

SERVE: Kentucky Secretary of State  
Capitol Building, Room 154  
700 Capital Avenue  
Frankfort, KY 40601

Case No. \_\_\_\_3:08cv-47-H\_\_\_\_

And

NATIONS TITLE AGENCY OF INDIANA, INC.  
9300 Shelbyville Road  
Louisville, Kentucky 40222

SERVE: Jon Clark  
9300 Shelbyville Road  
Suite 1020  
Louisville, Kentucky 40222

And

JON CLARK  
9300 Shelbyville Road  
Suite 1020  
Louisville, Kentucky 40222

DEFENDANTS

**COMPLAINT**

Comes now, the Plaintiff, James E. Null, et al., and for his Claim against  
Ameriquest Mortgage Company states as follows:

## **I. INTRODUCTION**

1. Beginning in the summer of 2002, Plaintiffs discussed refinancing their home and consolidating all their debt with Ameriquest.

2. After much negotiation, Plaintiffs agreed to enter into an agreement to refinance their home, based on the representations of Defendant, Ameriquest.

3. Ameriquest represented at all times that Plaintiffs were approved and ready to close.

4. Ameriquest persuaded them to close by stating that they would refinance the loan in two years. When the time came to refinance, Ameriquest refused to honor their commitment.

5. As a result, Plaintiffs were harmed by Defendants' unfair, unlawful, and deceptive business practices caused by soliciting, inducing, and closing this residential loan transaction in the State of Indiana.

## **II. PARTIES**

6. Defendant and Third Party Plaintiff James E. Null and Mildred Null (the "Nulls") are residents of the Commonwealth of Kentucky.

7. Defendant Ameriquest Mortgage Company ("Ameriquest") is a privately held corporation organized under the laws of the State of Delaware with its principal place of business in Orange, California. Ameriquest is the nation's largest privately held subprime lender. Ameriquest is a wholly owned subsidiary of privately held Ameriquest Capital Corporation.

8. Defendant Nations Title of Indiana, Inc. is an Indiana corporation with an address of 3939 Priority Way South Dr., Ste 210, Indianapolis, In 46240.

9. Defendant, Jon Clark, is upon information and belief, an individual resident of the State of Kentucky.

### **III. JURISDICTION AND VENUE**

10. Jurisdiction is proper pursuant to 28 U.S.C. § 1332 in the United States District Court for the Western District of Kentucky because Plaintiffs and Defendants are residents and citizens of different states and the amount in controversy exceeds the jurisdictional minimum, exclusive of interest and costs. Venue properly lies in the Western District of Kentucky pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to these claims occurred in Louisville in the Western District of Kentucky.

### **IV. FACTUAL BACKGROUND**

11. In 2002, the Nulls decided to refinance their home.

12. Almost immediately, Ed Smith ("Smith"), an Ameriquest employee and representative, telephoned The Nulls regarding refinancing their home. The Nulls informed Smith of their intent to refinance their debt.

13. Based on Ameriquest's assurances and quick response to their inquiries, the Nulls decided Ameriquest's offer was the best and closed with Ameriquest.

14. At the same time, the Nulls were informed that they would be able to refinance their loan in two years at a rate of 6.5 %.

15. Subsequent to the closing of the 2002 Mortgage, the Nulls were approached by the Title Company to resign their Mortgage and quitclaim deed because the originals were misplaced by the County Clerk.

16. In late 2003, the Nulls approached Ameriquest about refinancing their loan and were told that Ameriquest would not and could not refinance the loans. During the time

that the application was pending, they were informed by representatives of Ameriquest that they should not make their loan payments.

17. Subsequently, the loan refinance request was turned down and the loan was placed in collection and ultimately in foreclosure.

18. Subsequently, the Nulls determined that the Mortgage that was filed with the Barren County Clerk was not the same document they executed. In particular, the notary Jon Clark is unknown to them as he did not attend the closing.

19. The Nulls assert that Ameriquest had represented to them that they would refinance their loan and that there was a commitment to refinance their loan. They would not have financed with Ameriquest had they not been told of the refinance opportunity.

20. In addition, the Nulls assert that there is no valid and enforceable lien on their property as the Kentucky requirements have not been met.

## **V. CLAIMS**

### **COUNT I:**

#### **Violation of the Truth in Lending Act, 15 U.S.C. § 1601 et seq. and Federal Reserve Regulation Z, 12 C.F.R. § 226.1 et seq.**

21. Plaintiffs restate the allegations contained in paragraphs 1 through 20.

22. Plaintiff, Ameriquest is a creditor within the meaning of the Truth in Lending Act ("TILA") as implemented by Regulation Z.

23. Upon information and belief, Plaintiff violated TILA and Regulation Z by failing to provide Defendants with material disclosures in a form they could keep prior to consummation and notices of right to cancel that were clear, conspicuous, and reflective of the parties' legal obligations.

24. Defendants acted intentionally, maliciously, and with conscious disregard for

Plaintiffs' legal rights and financial well-being.

25. Any and all statute of limitations relating to disclosures and notices required under 15 U.S.C. section 1601 *et seq.* are tolled due to Defendants' failure to effectively provide the disclosures and notices.

26. Defendants have been unjustly enriched at the expense of the Plaintiffs who are therefore entitled to equitable restitution and disgorgement of profits realized by Defendants.

27. The acts of Defendants as described herein were willful, wanton and in conscious disregard of Plaintiffs' rights. As a result, Plaintiffs were injured in an amount in excess of the jurisdictional minimums of this Court.

**COUNT II:**  
**Predatory Lending**

28. Plaintiffs restate the allegations contained in paragraphs 1 through 27.

29. Amerquest engaged in predatory lending, defined by the U.S. Department of Housing and Urban Development as lending "involving deception or fraud, manipulation of borrowers through aggressive sales tactics, or taking unfair advantage of a borrower's lack of understanding about loan terms," by (a) charging excessive fees, points and interest rates unrelated to the borrower's credit/risk profile; (b) lending without regard to borrowers' ability to repay; (c) imposing excessive prepayment penalties that trap borrowers into predatory loans; (d) engaging in aggressive, high-pressure and/or misleading sales tactics; and (e) falsifying loan documents.

30. Amerquest knowingly made loans with high loan-to-value ratios putting the Plaintiffs in the position of spending years paying off refinanced loan balances without

developing any equity.

31. Ameriquest deceived The Nulls by falsifying loan applications and settlement documents, and forging signatures.

32. Defendants have intentionally, knowingly, recklessly and/or negligently ignored the Predatory Lending Practices committed by their employees and agents, failed to adequately train and supervise employees to prevent those employees from engaging in Predatory Lending Practices, and provided incentives and rewarded employees and agents that engaged in Predatory Lending Practices.

33. Defendants or their agents mislead Plaintiffs into signing loan documents without reading them by misrepresenting their contents and telling borrowers there is no need or time to read them—just “sign here.”

34. As a result, Plaintiffs were injured in an amount in excess of the jurisdictional minimums of this Court.

**COUNT III**  
**Breach of Contract**

35. Plaintiffs restate the allegations contained in paragraphs 1 through 34.

36. By failing to provide a loan in accordance with the terms and conditions represented to Plaintiffs, Defendant Ameriquest breached its contract with Plaintiffs.

37. As a result, Plaintiffs have been injured in an amount in excess of the jurisdictional minimums of this Court.

**COUNT IV:**  
**Fraud and Fraudulent Inducement by Ameriquest**

38. Plaintiffs restate the allegations contained in paragraphs 1 through 39.

40. Defendant Ameriquest misrepresented the terms and conditions of the

underlying mortgage transaction to Plaintiffs. This fraud induced Plaintiffs to enter into and retain the mortgage. Defendant knew it was misleading Plaintiffs and did so with the intent to have them execute the loan documents and/or continue the mortgage beyond the rescission period.

41. As a result, Plaintiffs have been injured in an amount in excess of the jurisdictional minimums of this Court.

**COUNT VI:**  
**Fraud and Fraudulent Inducement by Nations Title**

42. Plaintiffs restate the allegations contained in paragraphs 1 through 41.

43. Defendant Nations Title misrepresented the terms and conditions of the underlying mortgage transaction to Plaintiffs. This fraud induced Plaintiffs to enter into and retain the mortgage. Defendant knew it was misleading Plaintiffs and did so with the intent to have them execute the loan documents.

44. As a result, Plaintiffs have been injured in an amount in excess of the jurisdictional minimums of this Court.

**COUNT VII:**  
**Fraud and Breach of Contract by Third Party Defendant Jon Clark**

45. Plaintiffs restate the allegations contained in paragraphs 1 through 44.

46. Defendant Jon Clark fraudulently notarized the Mortgage attached as Exhibit A knowingly having never met the Nulls. Defendant Clark knew he was misleading Plaintiffs and did so with the intent to have them execute the loan documents and/or continue the mortgage beyond the rescission period.

47. As a result, Plaintiffs have been injured in an amount in excess of the jurisdictional minimums of this Court.

## VI. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, James and Mildred Null, demand judgment against Defendants Ameriquest, Nations Title and Clark, as follows:

1. A judgment against Defendants in a substantial amount of compensatory and punitive damages in excess of this Court's jurisdictional minimum;
2. A termination of the underlying mortgage and return of all fees paid to or on their behalf;
3. Restitution;
4. A trial by jury;
5. Attorneys' fees and costs pursuant to 15 U.S.C. § 1604(a)(3); and
6. Any and all other relief this Court deems proper.

Respectfully Submitted,

/s/ James K. Murphy  
James K. Murphy  
Lynch, Cox, Gilman & Mahan, PSC  
500 West Jefferson Street, Suite 2100  
Louisville, Kentucky 40202  
(502) 589-4215  
*Counsel for James and Mildred Null*



JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

3:08cv-47-H

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

JAMES E. NULL AND MILDRED NULL

## DEFENDANTS

AMERIQUEST MORTGAGE COMPANY, NATIONS TITLE AGENCY OF INDIANA, INC. AND JON CLARK

(b) County of Residence of First Listed Plaintiff Jefferson, KY  
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant Orange, CA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)

JAMES K. MURPHY, LYNCH, COX, GILMAN & MAHAN, PSC  
500 W. Jefferson St., Ste 2100, Louisville, KY 40202 (502)589-4215

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act (Excl. Veterans) <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1332Brief description of cause:  
Predatory Lending

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/17/2008

SIGNATURE OF ATTORNEY OF RECORD

/s/ James K. Murphy

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_